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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,269	06/30/1999	KEITH T. CHU	99RSS196	1021

1200 7590 02/17/2004

AKIN, GUMP, STRAUSS, HAUER & FELD  
711 LOUISIANA STREET  
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HOUSTON, TX 77002

EXAMINER
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EBRAHIMI DEHKORDY, SAEID

ART UNIT	PAPER NUMBER
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2626

DATE MAILED: 02/17/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/345,269

Applicant(s)

CHU, KEITH T.

Examiner

Saeid Ebrahimi-dehKordy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **Response to Amendment**

1. Applicant's arguments with respect to claim 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,7,11,15-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tonnby et al (U.S. patent 6,515,996) in view of Kennedy et al (U.S. patent 5,903,603)

Regarding claims 1,7,11 and 15 Tonnby et al disclose: A communications system configured for network latency recovery comprising: an internet protocol network (please note Fig.1 column 2 lines 52-62) a calling modem coupled to the internet protocol network (please note Fig.1 column 2 lines 52-62 where the calling modem is coupled with the internet protocol (IP)) However Tonnby et al dose not disclose: the calling modem including a timer, the timer being operable to store a network latency value, the calling modem being operable to compare the network latency value to a network latency threshold, to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold, and to transmit a high speed modem connection selection signal if the network latency value is less

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than the network latency threshold; and an answering modem coupled to the internet protocol network, the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal.

On the other hand Kennedy et al disclose:

the calling modem including a timer (please note Fig.7 column 9 lines 31-35) the timer being operable to store a network latency value (please note column 9 lines 35-45) the calling modem being operable to compare the network latency value to a network latency threshold (please note column 9 lines 45-55) to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold (please note column 9 lines 55-63) and an answering modem coupled to the internet protocol network the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal (please note as determined by teaching of Tonnby et al where modems could coupled to the internet protocol or IP and through the invention of Kennedy et al column 10 lines 16-20 the speed of the receiving modem could be altered in terms of threshold of the networked as explained by Kennedy et al).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Tonnby et al's invention according to the teaching of Kennedy et al, Kennedy et al in the same field of endeavor teach generally, both the transmitting modem and receiving modem must process data at the same rate in order

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to communicate thus by measuring the threshold of the network on the receiving modem side to the sending modem side.

Regarding claim 16 Kennedy et al disclose: The method of claim 15, further comprising the step of: establishing a low speed modem connection if the network latency is greater than the network latency threshold (please note column 9 lines 45-55).

Regarding claim 17 Kennedy et al disclose: The method of claim 16, further comprising the step of: providing a low speed modem selection signal if the network latency is greater than the network latency threshold to indicate to perform the establishing a low speed modem connection step (please note column 9 lines 55-63).

Regarding claim 20 Kennedy et al disclose: The method of claim 15, further comprising the step of: providing a high speed modem selection signal to indicate to perform the continuing operation step if the network latency is less than the network latency threshold (please note column 10 lines 16-22).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2-3,5,9,13 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Tonny et al (U.S patent 6,515,996) in view of Kennedy et al (U.S. Patent 5,903,603) and further in view of Schuster (U.S. Patent 6,483,600)

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Regarding claim 2 neither Tonnby et al nor Kennedy et al disclose: The communications system of claim 1, further comprising: a calling facsimile terminal coupled to the calling modem and an answering facsimile terminal coupled to the answering modem, On the other hand Schuster et al disclose: a calling facsimile terminal coupled to the calling modem and an answering facsimile terminal coupled to the answering modem (please note column 7 lines 33-67 and column 8 lines 1-13).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Tonnby et al and Kennedy et al's invention according to the teaching of Schuster et al, Schuster et al in the same field of endeavor teach generally , both the transmitting modem and receiving fax modems must process data at the same rate in order to communicate thus by measuring the threshold of the network on the receiving modem side to the sending modem side.

Regarding claim 3 Schuster et al disclose: The communications system of claim 1, wherein a T.38 calling gateway includes the calling modem and an T.38 answering gateway includes the answering modem (please note column 5 lines 65-67 and column 6 lines 1-4).

Regarding claims 5,9,13 and 18 Schuster et al disclose: The communications system of claim 1, wherein the low speed modem connection comprises a Group 3 connection on the other hand (please note column 5 lines 45-67 and column 6 lines 1-5).

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4,6,8,10,12,14,19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tonnby et al (U.S. Patent 6,515,996) in view of Kennedy et al (U.S. patent 5,903,603) and in view of Schuster et al (U.S. patent 6,483,600) and further in view of Yashida et al (U.S. patent 6,437,870)

Regarding claims 4,8,12 and 19 Neither Tonnby et al nor Kennedy et al nor Schuster et al teach the use of the protocols V.8 or V.34. On the other hand in the same filed of endeavor Yashida et al disclose: The communications system of claim 1, wherein the high speed modem connection comprises a V.8 modem connection (please note column 3 lines 17-43 and column 4 lines 56-64).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Tonnby et al and Kennedy et al and Schuster et al's invention according to the teaching of Yoshida et al, Yoshida et al in the same field of endeavor teach when V.8 facility is provided in the facsimile apparatus, it is necessary to attain communication capability with a facsimile apparatus having only a conventional T.30 protocol and communication capability with a facsimile apparatus which is not provided with the V.8 protocol.

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Regarding claims 6,10,14 and 21 Yoshida et al disclose: The communications system of claim 1, wherein the high speed modem connection comprises a V.34 half-duplex connection (please note column 4 lines 56-64).

**Other prior art cited**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tonnby et al (U.S. patent 6,515,996) is pertinent as disclosing a modem with IP support.

Yoshida et al (U.S. patent 6,437,870) is pertinent as disclosing a facsimile apparatus having V.8 protocol facility and facsimile communication method.

Maeda (U.S. patent 5,847,842) is pertinent as disclosing a facsimile apparatus having protocol for identifying modem type.

Williams et al (U.S. patent 6,317,455) is pertinent as disclosing a system and method for user information transfer before modem connection.

Qureshi et al (U.S. patent 4,756,007) is pertinent as disclosing a adaptive communication rate modem.

Rasanen (U.S. patent 6,192,055) is pertinent as disclosing a method and an arrangement for setting up a data call, and an adapter equipment.

Kennedy et al (U.S. patent 5,903,603) is pertinent as disclosing a modem training apparatus and method.



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**Contact Information**

- Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Saeid Ebrahimi-Dehkordy* whose telephone number is (703) 306-3487.

The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly Williams, can be reached at (703) 305-4863.

**Any response to this action should be mailed to:**

Assistant Commissioner for Patents  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306, or (703) 308-9052 (for **formal** communications; please mark  
"EXPEDITED PROCEDURE")

**Or:**

(703) 306-5406 (for **informal** or **draft** communications, please label  
"PROPOSED" or "DRAFT")

**Hand delivered responses** should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 305-4750.

*Saeid Ebrahimi-Dehkordy*  
Patent Examiner  
Group Art Unit 2626  
February 7 2004

*KAWilliams*  
**KIMBERLY WILLIAMS**  
**SUPERVISORY PATENT EXAMINER**